

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TERMAIN KIRBY,

Plaintiff,

-against-

WARDEN CARTER; CAPTAIN GUERRA;
CAPTAIN JOHN; CAPTAIN HORTON,

Defendants.

21-CV-9056 (AJN)

ORDER OF SERVICE

ALISON J. NATHAN, United States District Judge:

Plaintiff, who is currently detained in the George R. Vierno Center on Rikers Island, brings this action *pro se*. He alleges that the conditions of his confinement at the Vernon C. Bain Center (VCBC) violated his constitutional rights. By order dated November 3, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).¹

DISCUSSION

A. Waiver of Service

The Court directs the Clerk of Court to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that the following defendants waive service of summons: (1) VCBC Warden C. Carter; (2) Captain Horton, a VCBC Facility Storehouse Captain; and (3) Captain Guerra, the VCBC Housing Unit 3-AA Shift Supervisor.

¹ Prisoners are not exempt from paying the full filing fee, even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

B. “Captain John Doe”

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the New York City Department of Correction (DOC) to identify “Captain John Doe,” a VCBC Captain supervising the intake area at VCBC on October 5, 2021. It is therefore ordered that the New York City Law Department, which represents the DOC, must ascertain the identity and badge number of “Captain John Doe,” whom Plaintiff seeks to sue here, and the address where that defendant may be served.² The New York City Law Department must provide this information to Plaintiff and the Court within 60 days of the date of this order.

Within 30 days after receiving this information, Plaintiff must file an amended complaint naming the newly identified individual as a defendant. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order asking that defendant to waive service.

CONCLUSION

The Court directs the Clerk of Court to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendants VCBC Warden C. Carter, and VCBC Captains Horton and Guerra

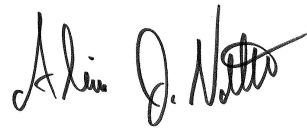
² If “Captain John Doe” is a current or former DOC employee or official, the New York City Law Department should note in the response to this order that an electronic request for a waiver of service can be made under the e-service agreement for cases involving DOC defendants, rather than by personal service at a DOC facility. If “Captain John Doe” is not a current or former DOC employee or official, but otherwise works or worked at a DOC facility, the New York City Law Department must provide a residential address where that individual may be served.

waive service of summons. An amended complaint form, for Plaintiff to complete after the John Doe defendant is identified, is attached to this order.

The Court directs the Clerk of Court to mail a copy of this order and the complaint to New York City Law Department at 100 Church Street, New York, New York 10007. The Court further directs the Clerk of Court to mail a copy of this order to Plaintiff, together with an information package.

SO ORDERED.

Dated: December 6, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", is written above a horizontal line.

ALISON J. NATHAN
United States District Judge